

The Honorable Marsha J. Pechman

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

YASMINE MAHONE, an individual, and)
BRANDON TOLE, an individual, on behalf of)
themselves and all others similarly situated,)

Plaintiffs,)

vs.)

AMAZON.COM, INC., a Delaware)
corporation, AMAZON.COM SERVICES)
LLC; a Delaware Limited Liability Company;)
and AMAZON.COM.DEDC, LLC; a)
Delaware Limited Liability Company; and)
AMAZON.COM.KYDC, LLC, a Delaware)
Limited Liability Company)

Defendants.)

CASE NO. 2:22-CV-00594-MJP

**PLAINTIFF'S MOTION FOR CLASS
CERTIFICATION AND
MEMORANDUM IN SUPPORT**

**NOTE ON MOTION CALENDAR:
FRIDAY, JANUARY 19, 2024**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	USERRA PROTECTIONS OF MILITARY MEMBERS	2
III.	FACTUAL BACKGROUND	7
A.	Amazon's Policies and Practices	7
1.	Military Leave of Absence	7
2.	Unpaid Time Off (UPT)	8
3.	Overall Value	8
B.	The Proposed Class Representatives Employment and Military Service	11
1.	Plaintiff Mahone.	11
2.	Plaintiff Tole.	13
IV.	ARGUMENT	16
A.	The Classes Satisfy Federal Rule of Civil Procedure 23(a)	17
1.	Numerosity	17
2.	The Classes are Ascertainable and Properly Defined	17
3.	There are Numerous Questions of Law and Fact Common to the Classes	18
4.	Plaintiffs' Claims are Typical of the Claims of the Class and Respective Subclasses	19
5.	Plaintiffs will Fairly and Adequately Protect the Interests of the Classes	20

1	B.	The Classes Satisfy Rule 23(B)(3).....	19
2			
3	1.	Common Issues Predominate Over Questions Affecting Individual	
4		Class Members.....	19
5	a.	Common Issues Predominate Over Questions Affecting	
6		Individual Class Members.	22
7	b.	Individual Damages Calculations Do Not Defeat	
8		Predominance.....	23
9	2.	A Class Action is the Superior Method of Adjudication	24
10	a.	The Class Members Have No Interest in Pursuing	
11		Individual Actions an No Other Actions are Pending	25
12	b.	This Court is the Appropriate Forum for this Litigation and	
13		There Are No Manageability Issues	25
14			
15	V.	CONCLUSION.....	26

TABLE OF AUTHORITIES

CASES

<i>Alberto v. GMRI, Inc.</i> , 252 F.R.D. 652, 661-62 (E.D. Cal. 2008)	20
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591, 623 (1997)	21
<i>Armstrong v. Davis</i> , 275 F.3d 849, 869 (9th Cir. 2001)	20
<i>Berger v. Home Depot USA, Inc.</i> , 741 F.3d 1061, 1068 (9th Cir. 2014)	22
<i>Boone v. Lightner</i> , 319 U.S. 561, 575 (1943)	5
<i>Clarkson v. Alaska Airlines, Inc.</i> , 59 F.4th 424, 428 (9th Cir., Feb. 1, 2023)	6
<i>Comcast Corp. v. Behrend</i> , 133 S. Ct. 1426, 1433 (2013)	23
<i>Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.</i> , 244 F.3d 1152, 1163 (9th Cir. 2001)	25
<i>Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass’n</i> , 375 F.2d 648, 653 (4th Cir. 1967)	17
<i>Erica P. John Fund, Inc. v. Halliburton Co.</i> , 131 S.Ct. 2179, 2184 (2011)	18
<i>Fishgold v. Sullivan Drydock & Repair Corp.</i> , 328 U.S. 275, 285 (1946)	5
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011, 1019 (9th Cir. 1998).	18
<i>Harris v. Palm Springs Alpine Estates, Inc.</i> , 329 F.2d 909, 913-14 (9th Cir. 1964)	17
<i>In re Live Concert Antitrust Litigation</i> , 247 F.R.D. 98, 120 (C.D. Cal. 2007)	21
<i>In re Wells Fargo Home Mortg. Overtime Pay Litig.</i> , 571 F.3d 953, 957 (9th Cir. 2009)	21
<i>Jimenez v. Allstate Ins. Co.</i> , 765 F.3d 1161, 1165 (9th Cir. 2014)	18

1	<i>Jordan v. County of Los Angeles</i> , 669 F.2d 1311, 1321 (9th Cir. 1982)	19
2		
3	<i>Keegan v. Am. Honda Motor Co.</i> , 284 F.R.D. 504, 521 (C.D. Cal. 2012)	17
4	<i>Kincaid v. City of Fresno</i> , 244 F.R.D. 597, 603 (E.D. Cal. 2007).....	20
5		
6	<i>Lerwill v. Inflight Motion Pictures Inc.</i> , 582 F.2d 507, 512-13 (9th Cir. 1978)	24
7	<i>Leyva v. Medline Indus. Inc.</i> , 716 F.3d 510, 513 (9th Cir. 2013)	24
8		
9	<i>Monroe v. Standard Oil Co.</i> , 452 U.S. 549, 555 (1981).....	6
10	<i>Myrick v. City of Hoover</i> , 69 F.4th 1309, 1312 (11th Cir., June 8, 2023)	5
11	<i>O'Connor v. Boeing North American, Inc.</i> , 184 F.R.D. 311, 335 (C.D. Cal. 1998)	21
12		
13	<i>Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC</i> , 31 F.4th 651, 663-664 (9 th Cir.	
14	2022).	16
15	<i>Owino v. Corecivic, Inc.</i> , 60 F.4th 437, 447 (9 th Cir. 2022)	22
16		
17	<i>Parsons v. Ryan</i> , 754 F.3d 657, 685 (9th Cir. 2014)	19
18	<i>Rannis v. Recchia</i> , 380 Fed. App'x 646, 651 (9th Cir. 2010).....	17
19		
20	<i>Rivera-Melendez v. Pfizer Pharms., LLC</i> , No. 12-1023, *13, 14 (1st Cir. Sep 20, 2013)	6
21	<i>Travers v. Fed. Express Corp.</i> , 8 F.4th 198, 199 (3rd Cir., Aug. 10, 2021).....	5
22		
23	<i>Valentino v. Carter–Wallace, Inc.</i> , 97 F.3d 1227, 1234 (9th Cir. 1996)..	17
24	<i>Vaquero v. Ashley Furniture Indus., Inc.</i> , 824 F.3d 1150, 1154 (9th Cir. 2016).....	22
25		
26	<i>Wal-Mart Stores, Inc. v. Dukes</i> , 564 U.S. 338, 350 (2011)..	4
27		

STATUTES

38 U.S.C. § 4301	3
38 U.S.C. § 4301(a)(1).....	5
38 U.S.C. § 4302(b)	6, 7
38 U.S.C. § 4303(3) and (16).....	12, 13
38 U.S.C. § 4323(c)(2).....	25
38 U.S.C. § 4323(d).....	24

RULES

20 C.F.R. § 1002.7(b)	7
20 C.F.R. § 1002.85(b)	7
20 C.F.R. § 1002.87	7
20 C.F.R. § 1002.191	6
20 C.F.R. § 1002.192	6
20 C.F.R. §1002.193	6, 11
20 C.F.R. § 1002.213	6

1 Plaintiffs Yasmine Mahone and Brandon Tole (“Plaintiffs”), on behalf of themselves and
 2 the class of all other similarly situated persons, as proposed Class Representatives, hereby submit
 3 the following Motion for Class Certification. This is a class action brought pursuant to the
 4 Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 *et*
 5 *seq.* (“USERRA”) against Defendants Amazon.com, Inc., Amazon.com Services LLC,
 6 Amazon.com.dedc, LLC and Amazon.com.kydc LLC’s (collectively “Amazon”).

7 Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3), Plaintiffs seek
 8 certification of nationwide Classes of all current and former employees of Amazon who were or
 9 are currently serving in the United States Armed Services or National Guard (“Military
 10 Employees” or the “Class”). Plaintiffs also seek certification of the following subclasses: 1) the
 11 “Hourly Military Employee Subclass” consisting of a nationwide class of all current and former
 12 hourly employees of Amazon who were or are currently serving in the United States Armed
 13 Services or National Guard; and 2) the “Salaried Military Employee Subclass” consisting of a
 14 nationwide class of all current and former salaried employees of Amazon who were or are currently
 15 serving in the United States Armed Services or National Guard.

16 I. INTRODUCTION

17 Amazon lists among its Leadership Principles that Success and Scale Bring Broad
 18 Responsibility: “We are big, we impact the world, and we are far from perfect. We must be humble
 19 and thoughtful about even the secondary effects of our actions.”¹ Actions speak louder than words.
 20 Amazon has failed in its responsibilities to its Military Employees by not implementing adequate
 21 policies and procedures to protect them and ensure their employment rights under USERRA.

22 This case challenges Amazon’s policies, practices and/or omissions relating to its failures
 23 to protect military servicemembers in violation of USERRA. Amazon’s policies and practices
 24 regarding Military Leave of Absence (“MLOA”) are applied the same to the Class of all Military
 25 Employees. Likewise, to the extent there are specific policies applicable to Hourly or Salaried
 26

27 ¹ <https://www.amazon.jobs/content/en/our-workplace/leadership-principles>

1 Military Employees, those respective policies and practices applied the same to the respective
 2 Subclasses. As such, common questions of law and fact are pervasive and predominate in this case.
 3 Indeed, the common and salient issues are straightforward:

- 4 1. Did Amazon's policies and practices concerning MLOA violate USERRA?
- 5 2. Did Amazon's policies and practices concerning its Overall Value ("OV") ranking in
 6 conjunction with MLOA violate USERRA?
- 7 3. As to the Hourly Military Employee Subclass, did Amazon's policies and practices
 8 concerning Unpaid Time Off ("UPT") in conjunction with MLOA violate USERRA?
- 9 4. Were Amazon's violations of USERRA willful warranting liquidated damages in an
 10 additional amount equal to the present value of the Class's and Subclass's lost wages
 11 and other benefits pursuant to Section 4323(d)(1)(C)?

12 The answer is the same for all Class and respective Subclass members, and the evidence
 13 overwhelmingly proves the answer is "Yes" to each common question presented.

14 Class "claims must depend upon a common contention . . . of such a nature that it is
 15 capable of classwide resolution - which means that determination of its truth or falsity will resolve
 16 an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores,*
 17 *Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Determination of the common contentions presented in
 18 this case will resolve central issues relating to Amazon's policies and practices relating to MLOA,
 19 UPT an OV in one stroke, respectively. The claims will be based on the resolution of overtly
 20 common issues of law and fact.

21 **II. USERRA PROTECTIONS OF MILITARY SERVICEMEMBERS**

22 The Ninth Circuit recently articulated the importance of USERRA in a case against Alaska
 23 Airlines entitled *Clarkson v. Alaska Airlines, Inc.*:

24 For over sixty years, our nation has encouraged military service by continually
 25 easing the burden on servicemembers who must juggle military duties with civilian
 26 jobs. In the Selective Training and Service Act of 1940, Congress ensured for the
 27 first time—but not the last—that veterans returning to civilian jobs would not face
 discrimination on account of their service. Over the succeeding decades, re-
 employment rights were extended to military reservists and National Guardsmen.

1 These protections remain all the more important today, as our nation relies on an
 2 all-volunteer military force. Indeed, just as the draft came to an end, Congress
 3 expanded servicemembers' protections in the Veterans' Reemployment Rights Act
 4 of 1974. Congress continued its tradition of recognizing the sacrifice and dedication
 of servicemembers in 1994 by enacting the Uniformed Services Employment and
 Reemployment Rights Act ("USERRA").

5 *Clarkson v. Alaska Airlines, Inc.*, 59 F.4th 424, 428 (9th Cir., Feb. 1, 2023)

6 "Military reservists play a vital role in our nation's defense policy." *Myrick v. City of*
 7 *Hoover*, 69 F.4th 1309, 1312 (11th Cir., June 8, 2023). "When called to service, these men and
 8 women are expected to leave their civilian jobs, sometimes for years on end." *Id.* To alleviate this
 9 burden, Congress enacted USERRA. *Id.* citing 38 U.S.C. §4301(a). "In short, USERRA recognizes
 10 that those who serve in the military should be supported, rather than penalized, for their service."
 11 *Clarkson*, 59 F.4th at 429.

12 "Congress enacted USERRA to mitigate the employment disadvantages that stem from
 13 non-career military service." *Id.*, (citing 38 U.S.C. §4301(a)(1)). "In pursuit of this purpose,
 14 Congress imposed a number of obligations on employers and granted a number of entitlements to
 15 military employees." *Id.* "The Supreme Court has long admonished courts to construe statutes
 16 protecting veterans liberally for the benefit of the veteran." *Clarkson*, 59 F.4th at 424 (citing
 17 *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285, 66 S. Ct. 1105, 90 L. Ed. 1230
 18 (1946)). ("[A]ny interpretive doubt is construed in favor of the service member, under the pro-
 19 veteran canon."); *see also*, *Boone v. Lightner*, 319 U.S. 561, 575 (1943) ("USERRA is always to
 20 be liberally construed to protect those who have been obliged to drop their own affairs to take up
 21 the burdens of the nation.")

22 "Congress intended USERRA and its predecessor statutes to protect reservists during their
 23 'frequent absences from work' with the full understanding that those frequent absences 'could
 24 cause considerable inconvenience to an employer.'" *Clarkson*, 59 F.4th at 436 (citing *Monroe v.*
 25 *Standard Oil Co.*, 452 U.S. 549. 555 (1981)). "Nevertheless, 'Congress has provided . . . that
 26 employers may not rid themselves of such inconveniences and productivity losses by discharging
 27 or otherwise disadvantaging employee-reservists solely because of their military obligations.'" *Id.*

1 This case is about the obligations and entitlements in Sections 4311, 4313 and 4316 of
 2 USERRA (further codified by 20 C.F.R. § 1002.191) which provides that an employee is entitled
 3 to be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority,
 4 and other job perquisites, that he or she would have attained if not for the period of service.

5 The Department of Labor clarified that 20 C.F.R. § 1002.191 (Titled: “What position is the
 6 employee entitled to upon reemployment?”) and 1002.192 (Titled “How is the specific
 7 reemployment position determined?”) apply to both “discretionary and non-discretionary”
 8 promotions. *See, Rivera-Melendez v. Pfizer Pharms., LLC*, No. 12-1023, *13, 14 (1st Cir. Sep 20,
 9 2013). Accordingly, the type of position is irrelevant to the reemployment analysis. “In all cases,
 10 the starting point for determining the proper reemployment position is the escalator position, which
 11 is the position that that the employee would have attained if his continuous employment had not
 12 been interrupted due to uniformed service.” 20 C.F.R. § 1002.192. *See also*, 20 C.F.R. §1002.213.
 13 An employee “is entitled to the seniority and other rights and benefits determined by seniority that
 14 the person had on the date of the commencement of service in the uniformed services plus the
 15 additional seniority and rights and benefits that such person would have attained if the person had
 16 remained continuously employed.” 38 U.S.C. § 4302(b); *see also*, 20 C.F.R. §1002.193 (“The
 17 employer must determine the seniority rights, status, and rate of pay as though the employee had
 18 been continuously employed during the period of service.”).

19 USERRA expressly supersedes any agreement and/or employer policy. 38 U.S.C.
 20 §4302(b); 20 C.F.R. §1002.7(b). An employee need not request time off or permission to perform
 21 military service obligations. The employee must give notice to the employer, such notice may be
 22 verbal or written, and need not follow any particular format. 20 C.F.R. §§ 1002.87; 1002.85(b).

23 **III. FACTUAL BACKGROUND**

24 **A. Amazon’s Policies and Practices**

25 **1. Military Leave of Absence (MLOA)**

26 In response to discovery “Amazon has produced the Military Leave Policy in effect during
 27 the relevant time period (2017-present) as BATES AMAZON-OLSON02772–2779; AMAZON-

OLSON02752–2755; AMAZON-OLSON02764–2767; and AMAZON-OLSON02787–2793.” Declaration of Gene J. Stonebarger in Support of Motion for Class Certification (“Stonebarger Decl.”), Ex. 2, pp. 6:23-7:12; Declaration of Brian Lawler in Support of Motion for Class Certification (“Lawler Decl.”), Exs. 2-5. Amazon had substantially similar MLOA policies and practices from 2016-2022. *Id.* Amazon outsourced its leave of absence administration, including its MLOA administration, to a third-party company (Reed) from 2017 through 2020. Lawler Decl., Ex. 9, Hughes Depo., 39:22-45:25. Amazon’s 30(b)(6) witness regarding the topic of MLOA policies since 2017 (Anne Hughes) did not know what Reed’s practices were relating to its administration of MLOA, how MLOA was tracked or how Amazon communicated with Reed about MLOA taken by Amazon’s employees. Lawler Decl., Ex. 9, Hughes Depo., p. 44:3-45:25. Amazon has refused to provide discovery responses relating to its agreement with Reed for the administration of MLOA during this time period, which is the subject of a discovery dispute pursuant to LRC 37 pending before the Court. [Doc. 68.]

In 2020, Amazon began its MLOA administration in house. Lawler Decl., Ex 10 [AMAZON-OLSON00886]; Lawler Decl., Ex. 9, Hughes Depo., p. 41:24-16. Prior to December 2021 there was no person at Amazon in a position to manage the MLOA policy, “it was a new job.” Lawler Decl., Ex. 9, Hughes Depo., p. 24:2-16. At all times after termination of the Reed agreements in 2021, Department of Leave Services (“DLS”) case managers (who administered all types of leaves) were assigned in way unknown by Amazon and responsible for managing the rights of the Military Employees while on MLOA. Lawler Decl., Ex. 9, Hughes Depo., pp. 32:5-34:17. Amazon did not put any person in a position specific to training any employees on MLOA until mid-2021 when it put Brian Poole in a position to train case managers. Lawler Decl., Ex. 12, Poole Depo., pp. 16:5-14.

Amazon’s MLOA policy has provisions that are inconsistent with USERRA and place unlawful burdens on its employees who intend to take MLOA. Lawler Decl., Ex. 10. Amazon requires its employees to “request” MLOA, and adds “whenever possible, Military LOA should be requested 30 days prior to the start of the leave.” *Id.* Also, “Amazon may request that the

1 employee submit Military Orders (or other documentation) at the time the Military LOA is
 2 requested in order to assist with administering the LOA . . . However, documentation is only
 3 required for Military LOA that exceeds a specified duration and upon the employee’s request for
 4 reinstatement (return to work).” *Id.*

5 On August 18, 2022, more than three months after the filing of this lawsuit, Amazon for
 6 the first time created a “USERRA Military Case Management SOP.” Lawler Decl., Ex. 7. The
 7 current MLOA policy has been in place since March 2022. Lawler Decl., Ex. 9, Hughes Depo, p.
 8 25:11-21.

9 **2. Unpaid Time Off (UPT)**

10 Amazon has produced its current UPT policy in response to discovery which remained
 11 consistent from 2019 through 2022. Stonebarger Decl., Ex. 2 [RFP 14] p. 13:8-21; Lawler Decl.,
 12 Ex. 8; Lawler Decl., Ex. 10, Morell Depo, p. 43:2-25. “UPT is calculated based on how much time
 13 an employee misses outside of their shift.” Lawler Decl., Ex. 10, Morell Depo, p. 21:2-19. There
 14 is only “one” type of UPT. *Id.* at p. 20:15-20. UPT only applies to hourly employees. *Id.* at p.22:4-
 15 6. There is no dispute that Mahone’s unpaid time off was calculated and inputted consistent with
 16 Amazon’s Policy for Unpaid Time Off (UPT). *Id.* When Amazon was asked to describe with
 17 particularity how and based on what criteria UPT is calculated and inputted into YOUR
 18 employees’ files or databases, “Amazon refers Plaintiffs to its Policy for Attendance Unpaid Time
 19 (UPT) - US (BATES AMAZON-OLSON02794–2796), which explains, at a high level, the process
 20 for accruing and using UPT.” Stonebarger Decl., Ex. 3 [Rogs 6 and 7] p. 8:20-10:11. There is no
 21 cross-referencing that occurs through automation or otherwise in Amazon’s systems to determine
 22 whether an employee missing time is on MLOA. Lawler Decl., Ex. 10, Morell Depo, p. 23:15-20.

23 When asked to identify all of Amazon’s “current or former employees who have been
 24 disciplined or terminated from their employment with YOU for having a negative UPT balance,”
 25 and for “each individual identified, state the date of each disciplinary action or date of termination,
 26 the specific conduct leading to discipline or termination, and whether that employee was offered
 27 reinstatement”: “Amazon refers Plaintiffs to its amended response to Request for Production

1 (“RFP”) No. 24.” Stonebarger Decl., Ex. 3 [Rog 17], pp. 18:22-19:16. In Response to RFP No. 24
 2 “Amazon responds to as follows: Amazon has produced a data file that contains information on
 3 all approved military-leave-of-absence events between 2018 (the earliest year for which data are
 4 available) and 2022, as well as certain employment information regarding each employee, as Bates
 5 number AMAZON_03324.” Stonebarger Decl., Ex. 4 [RFP 24], p. 8:9-23.

6 Amazon’s person most knowledge on UPT has never received any training from anyone at
 7 Amazon relating to its MLOA policy or relating to USERRA. Lawler Decl., Ex. 10, Morell Depo,
 8 p. 18:9-11. Amazon has refused to produce a witness on the Topic of “Standard Operating
 9 Procedures relating to Unpaid Time Off (“UPT”)” pursuant to FRCP 30(B)(6) without any basis,
 10 which is also a dispute included in the LRC 37 submission [Doc. 68, p. 23] Amazon has refused
 11 to allow Plaintiffs to question Amazon through depositions regarding its delayed document
 12 productions of SOPs relating to UPT produced after the August 22, 2023 Depositions. *Id.*

13 **3. Overall Value (OV)**

14 Pay and promotion decisions at Amazon are based upon Company-wide policies and
 15 practices tied to Overall Value (OV) ratings of the Employees. Amazon’s employee performance
 16 evaluation system generally includes five separate tiers: “Least Effective” (“LE”), the poorest
 17 rating an employee can receive; “Highly Valued” (“HV”), which is further broken into three
 18 separate sub-categories ranging from HV1, HV2, and HV3, wherein HV1 is the lowest and HV3
 19 is the highest; and “Top Tier” (TT), which is the highest rating an Amazon employee can receive.
 20 Toole Decl., ¶13; Lawler Decl., Ex 1, Dwyer Decl. p.4:8-15; Ex. 9, Hughes Depo., p. 73:10-14. The
 21 OV performance code/rating/ranking assigned to an Amazon employee is a factor utilized by
 22 Amazon in determining employee compensation. Stonebarger Decl., Ex. 6 [RFA 34], p. 5:19-6:9.

23 These OV rankings directly impact an employees’ incentive compensation, eligibility for
 24 promotions, retention in employment, and may also result in employees being faced with
 25 disciplinary action, such as performance improvement plans (“PIP”) a/k/a “focus plans,” or even
 26 termination from employment. *Id.* Across the entire Company, Amazon employees are forced into
 27 a curve on the OV rating schedule such that a certain % of Amazon employees are required to be

rated in each respective rating category, include in the Least Effective (“LE”) category. Lawler Decl., Ex 11, Dwyer Decl, p. 26:23-33:20; Ex. 9, Hughes Depo., p. 73:10-14. When an employee is placed in the LE rating category, a requirement is triggered for the respective employee’s supervisor to prepare a Performance Improvement Plan (“PIP”). OV rating is a factor considered as part of the process. *Id.* (“There are multiple factors that are taken into consideration for promotion, and overall value is a summation of performance, and it is one factor that will be looked into when consideration for readiness for promotion.”). Amazon conducts performance evaluations for Military Employees while they are on MLOA. Lawler Decl., Ex. 9 Hughes Depo., p. 130:3-24. This leads to supervisors conveniently placing the Military Employee into an inferior OV, including LE, to make room for others in the curve and to avoid the burden of preparing PIPs. Declaration of Brandon Tole in Support of Motion for Class Certification (“Tole Decl.”), ¶¶17, 18.

Amazon has unilaterally selected certain employment information regarding each employee to be included in the spreadsheet identified as AMAZON_03324, while withholding responsive employment information, including amongst other things: the OV rating/coding/points, NPS rating/coding/points, and Job Levels with corresponding promotion dates. Stonebarger Decl., ¶¶2-4. This information is the promotions and performance-related data regarding all employees across the company who took military leave; which Amazon has made clear that it not be producing without a court order. *Id.* The specific promotion and performance-related coding data being withheld is directly relevant to the class claims in this case, including whether Class members were deprived of the seniority rights, status, and rate of pay that they were entitled to as though the employee had been continuously employed during the period of service.

Amazon also has refused to produce a witness on the Topic of “Amazon’s utilization of Overall Value (OV) rating, coding, ranking, and/or points relating to employee performance” pursuant to FRCP 30(B)(6) without any basis, which is also a dispute included in the LRC 37 submission [Doc. 68, p. 23.] OV ratings are not disclosed to employees and OV rating is a direct factor in determining promotions and compensation levels. Lawler Decl., Ex. 11, Dwyer Depo,

pp. 32:19-33:20. The specific promotion and performance processes is directly relevant to the Class claims in this case, including whether the putative Class members were deprived of the seniority rights, status, and rate of pay that they were entitled to as though the employee had been continuously employed during the period of service. *See*, 20 C.F.R. §1002.193.

B. The Proposed Class Representatives Employment and Military Service

The Military Employees' protected status as members of the military was a motivating factor in Amazon's denial of benefits, conditions and privileges of their employment as a result of their military responsibilities. The experiences and treatment of Plaintiff Mahone resulting from Amazon's policies and practices impacting Hourly Military Employees is similar to the other Hourly Military Employees. The experiences and treatment of Plaintiff Tole resulting from Amazon's policies and practices impacting Salaried Military Employees is similar to the other Salaried Military Employees.

1. Plaintiff Mahone

Amazon has admitted that "the basis to terminate Mahone's employment with Amazon on October 20, 2020, was her negative UPT balance." Stonebarger Decl., Ex. 5, FRA No. 6. Mahone's negative UPT balance resulted from her MLOA wherein she was performing military service obligations. *Id.* [RFA 5] at p. 6:5-13.

Mahone was employed by Amazon in Bessemer, Alabama from July 16, 2020 until she was terminated on October 18, 2020. Declaration of Yasmine Mahone in Support of Plaintiffs' Motion for Class Certification ("Mahone Decl.") at ¶6. At all times relevant, Mahone was a qualified employee and member of the uniformed services as defined by 38 U.S.C. §4303(3) and (16), as a member of the Alabama Army National Guard ("AANG") currently holding the rank of Specialist (paygrade E-3). *Id.* at ¶3; Stonebarger Decl., Ex. 5 [RFA 1], p. 4:24-2:3.

Mahone performed various periods of military service during her employment with Amazon that required her to take military leave. *Id.* at ¶4. From October 16 through 18, 2020, Mahone was performing military service obligations, also known as a "drill weekend" or "battle assembly." *Id.* at ¶8. Prior to the October drill weekend, Mahone timely notified Amazon of her

1 | drill weekend and took military leave without pay (“LWOP”) from Thursday, October 15 through
2 | Sunday, October 18. Mahone Decl. at ¶13. Amazon approved this request on September 29, 2020.
3 | *Id.*; Stonebarger Decl., Ex. 5 [RFA 3], p. 5:11-18. On Sunday, October 18, 2020, Mahone was
4 | performing military service obligations when she received an email from Amazon terminating her
5 | employment because her UTO balance was 36 hours, which was a direct result of the three shifts
6 | she missed for military service during the military drill weekend. Mahone Decl. at ¶14.

7 | On October 22, 2022, Amazon Disability and Leave Services (“DLS”) Case Manager
8 | Maggie Otarola emailed Mahone stating “[w]e wanted to reach you and you have recently been
9 | terminated from Amazon, and we want to confirm if you believe this had anything to do with un-
10 | reported Military leave dates. Please contact our HR Military Team, if you believe you were
11 | incorrectly terminated. You will be required to provide military documentation to support any
12 | unreported dates.” *Id.* at ¶15. Mahone responded on October 26, 2020, that she provided proof that
13 | she was performing military service during October 15-18, 2020 prior to her departure to drill; and
14 | Mahone again emailed a copy of her fiscal year 2021 drill schedule to Otarola on October 27, 2020
15 | – demonstrating that the time she was absent from Amazon in October was to perform her monthly
16 | military drill obligation. *Id.* at ¶16. Stonebarger Decl., Ex. 5 [RFA 8], p. 7:7-16. On November 11,
17 | 2020, Otarola emailed Mahone and stated “our escalations department evaluated your termination
18 | case and informed us that since documentation was not provided timely, the leave time was not
19 | coded causing the negative UPT hours. At this moment, the DLS team will not proceed with the
20 | reinstatement request.” *Id.* at ¶18.

21 | Otarola, as a member of Amazon’s “DLS Military Team,” and other employees of
22 | Amazon’s “escalation department” had actual knowledge of USERRA and Amazon’s obligations
23 | thereunder. *Id.* at ¶19. Despite Amazon having knowledge that Mahone’s UPT was to perform
24 | military service, they knowingly terminated her from her position of employment and failed to
25 | offer her reinstatement despite Mahone providing proof of her military service obligation. *Id.* at
26 | ¶20. After the November 11, 2020 email from Otarola informing Mahone she would not be
27 | reinstated with Amazon, Mahone received no communication from Amazon about her termination

1 until she brought this legal action on May 4, 2022. *Id.* at ¶21.

2 **2. Plaintiff Tole**

3 Tole began employment with Amazon on June 19, 2017, and he is currently still employed
4 by Amazon as an Operations Manager. Declaration of Brandon Tole in Support of Plaintiffs’
5 Motion for Class Certification (“Tole Decl.”) at ¶6. Tole has had continued military responsibilities
6 in the United States Marine Corps Reserve (“USMCR”) since 2017, and at all times relevant, he
7 was a qualified employee and member of the uniformed services as defined by 38 U.S.C. §4303(3)
8 and (16), currently holding the rank of Major. *Id.* at ¶7; Stonebarger Decl., Ex. 5[RFA 12], p. 8:19-
9 24.

10 Tole began his employment as an Outbound Area Manager with Amazon through its
11 “Military Leaders Program” (“MLP”), which was an executive management program wherein
12 members would gain experience in as an Area Manager (L5), Operations Manager (L6), Senior
13 Operations Manager (L7), and then “graduate” the Program to the position of General Manager
14 (L8). *Id.* at ¶9. The program was expected to be four years long. *Id.* This program has since been
15 renamed “Amazon Pathways” (“Pathways”) and is “designed to rapidly develop talented MBA or
16 Masters-level graduates and high-potential transitioning military leaders with the skills they need
17 to be Amazon General Managers and Directors.” *Id.*

18 In December of 2017, Tole was promoted to Operations Manager (L6). *Id.* at ¶9. In Tole’s
19 performance review for the first quarter of 2019, his supervisor made several positive statements
20 regarding his accomplishments. *Id.* at ¶10. Tole expected to be eligible for promotion to L7 during
21 the spring of 2019, however, after notifying Amazon of his pending military service obligation, he
22 was pulled from consideration for L7 by his supervisor. *Id.* at ¶12. From the time of his promotion
23 to L6 to the time of his departure for military deployment in May of 2019, Tole had been in the
24 role of Operations Manager (L6) for approximately seventeen months. *Id.* at ¶16.

25 After Tole departed on MLOA in May of 2019, he was rated “LE” by his Senior Operations
26 Manager and was assigned a “focus plan.” *Id.* at ¶18. Tole was not notified by the supervisor who
27 rated him LE that he received such a rating, nor was he presented with a focus plan. *Id.* During

1 Tole's MLOA, he was assigned to five separate Senior Operational Managers. *Id.* at ¶19.

2 Tole did not receive any pay raises commensurate with his peers in the MLP, nor did he
3 receive a bonus or increase to his compensation for the time he worked during 2019, despite having
4 positive employee evaluations during his time working with Amazon. *Id.* at ¶20. On May 6, 2020,
5 while still on MLOA, Tole spoke with Amazon's Senior Manager for the World-Wide Pathways
6 program at that time, who advised Tole that "[f]rom a Pathways perspective, you pause where you
7 were in your timeline, for example if you were at 12 months when you left, and you were gone for
8 12 months, you will come back at 12 months tenure in Pathways." *Id.*; Lawler Decl., Ex. 13.

9 Amazon's policy on "Position Reinstatement" for return from MLOA states "reinstatement
10 to prior position, or position that you would have been in had you not taken military leave, is
11 offered." *Id.* at ¶23. Tole returned to work at Amazon in early November of 2021 and was assigned
12 to the position of Inbound Operations Manager (L6) and rescheduled to a night shift position to
13 work under supervisor who was hired after Tole but promoted above Tole. *Id.* at ¶25. Plaintiff Tole
14 scheduled a meeting with his supervisors on January 24, 2022 because he believed Amazon was
15 not addressing his rights under USERRA. Lawler Decl., Ex. 14.

16 During the meeting, Tole specifically asked when he would be eligible for promotion to
17 L7. *Id.* at ¶26. Tole's supervisor told him that none of the projects that he completed prior to his
18 MLOA in 2019 would count towards his eligibility for L7, and that due to the time he was gone
19 on MLOA, Tole progress towards L7 was starting over with a "clean slate." *Id.* This is consistent
20 with Amazon's policies and practices of not giving any credit for work performed prior to the
21 preceding 12 months of a review related to promotion or pay.

22 Amazon additionally reset Tole's "progress rating" – a mentoring metric utilized by
23 Amazon managers, to zero percent, without explanation. *Id.* During the January 24th meeting, Tole
24 also learned that he received the "LE" rating while he was on MLOA. When Plaintiff Tole asked
25 for the basis for his "LE" rating, his supervisor would not provide that information. *Id.* at ¶27.
26 Also, during the January 24th meeting, Tole was advised that he was "too new to rate," and that
27 his Operational Leadership Ranking for 2022 would automatically be rated "HV1." *Id.* This

1 ranking limited the bonus and incentive compensation for which Tole was eligible and was a
 2 violation of Amazon’s corporate policy not to assign generic ratings to employees. *Id.* at ¶28. Tole
 3 was told in the January 24th meeting that the next opportunity for Tole to interview for promotion
 4 to L7 would occur in June 2022, but then in March 2022, Tole was told any interview for L7 would
 5 be delayed again until August 2022. *Id.* at ¶29.

6 Early spring of 2022, Tole’s direct supervisor advised Plaintiff Tole that he may be subject
 7 to removal from the MLP due to the not meeting the Pathways standard of obtaining the position
 8 of L7 within thirty-six months. Tole was also told that he needed to “find more projects” because
 9 the former projects Tole completed prior to his MLOA would not count towards his eligibility to
 10 L7. *Id.* at ¶31. In August of 2022, Tole was not provided an opportunity to interview for promotion
 11 to L7. *Id.* at ¶32.

12 Currently, Tole is the longest tenured L6 at his working location, having approximately 28
 13 months experience at that pay grade. *Id.* at ¶33. Tole has never been formally disciplined during
 14 his employed with Amazon. *Id.* at ¶34. All of Tole’s non-military employee contemporaries in the
 15 MLP and Pathways still employed by Amazon at his working location are currently L7s or L8s,
 16 while Tole remains an L6. *Id.* at ¶35; Stonebarger Decl., Ex. 5, [RFAs 15, 16] pp. 9:12-10:5. Other
 17 Amazon employees in the MLP to whom Tole has at least one year seniority over have been
 18 promoted to L7 or even L8. Tole Decl. at ¶36.

19 IV. ARGUMENT

20 As the Ninth Circuit recently articulated in *Olean Wholesale Grocery Coop., Inc. v. Bumble*
 21 *Bee Foods*:

22 Rule 23 provides a procedural mechanism for “a federal court to adjudicate claims
 23 of multiple parties at once, instead of in separate suits.” *Shady Grove Orthopedic*
 24 *Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 408, 130 S. Ct. 1431, 176 L. Ed. 2d
 25 311 (2010). As a claims-aggregating device, Rule 23 “leaves the parties’ legal rights
 and duties intact and the rules of decision unchanged,” *id.*, and it does not affect the
 substance of the claims or plaintiffs’ burden of proof, see 28 U.S.C. § 2072(b).

26 To take advantage of Rule 23’s procedure for aggregating claims, plaintiffs must
 27 make two showings. First, the plaintiffs must establish “there are questions of law
 or fact common to the class,” as well as demonstrate numerosity, typicality and

adequacy of representation.⁴ Fed. R. Civ. P. 23(a). A common question “must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 131 S. Ct. 2541, 180 L. Ed. 2d 374 (2011). By contrast, an individual question is one where members of a proposed class will need to present evidence that varies from member to member. See *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016).

Second, the plaintiffs must show that the class fits into one of three categories. See Fed. R. Civ. P. 23(b). To qualify for the third category, Rule 23(b)(3), the district court must find that “the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). “The predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.” *Tyson Foods*, 577 U.S. at 453 (cleaned up). The requirements of Rule 23(b)(3) overlap with the requirements of Rule 23(a): the plaintiffs must prove that there are “questions of law or fact common to class members” that can be determined in one stroke, see *Wal-Mart*, 564 U.S. at 349, in order to prove that such common questions predominate over individualized ones, see *Tyson Foods*, 577 U.S. at 453-54. Therefore, courts must consider cases examining both subsections in performing a Rule 23(b)(3) analysis.

Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC, 31 F.4th 651, 663-664 (9th Cir. 2022)

A. The Classes Satisfy Federal Rule of Civil Procedure 23(a)

Under FRCP 23(a), a plaintiff must show: (i) numerosity; (ii) commonality; (iii) typicality; and (iv) adequacy of representation. Fed. R. Civ. P. 23(a). Once these four prerequisites are satisfied, a court must consider whether the proposed class can be maintained under the standards of Rule 23(b). See, e.g., *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996).

1. Numerosity

FRCP 23(a)(1) requires that, to be certified, a class must be “so numerous that joinder of all members is impracticable.” “Impracticability does not mean impossibility, but only the difficulty or inconvenience of joining all members of the class.” *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964). No specific number of members is needed to warrant a class action. *Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass’n*, 375 F.2d 648,

653 (4th Cir. 1967); *Rannis v. Recchia*, 380 Fed. App'x 646, 651 (9th Cir. 2010)).

Here, Amazon's records show that since January 1, 2015 through July 24, 2023 there were at least 14,842 Amazon Employees who took MLOA totaling 121,843 leave periods. Stonebarger Decl., ¶¶ 2-4. Of the 14,842 military servicemembers, 10,756 no longer work for Amazon. *Id.*

2. The Classes are Ascertainable and Properly Defined

Although not explicitly referenced in Rule 23(a), some courts have held that there is an additional prerequisite to certification – that the class be ascertainable. *Keegan v. Am. Honda Motor Co.*, 284 F.R.D. 504, 521 (C.D. Cal. 2012). A class definition satisfies Rule 23's implied ascertainability requirement if the class is defined by reference to objective factors and it is administratively feasible to determine whether a particular individual belongs to the class. *Id.* Here, the Amazon has admitted that the members of the Class and Subclasses can be identified from records maintained by Defendant. Plaintiff seeks class certification of the following classes:

Military Employee Class: All current and former employees of Amazon who were or are currently serving in the United States Armed Services or National Guard.

Hourly Military Employee Subclass: All current and former hourly employees of Amazon who were or are currently serving in the United States Armed Services or National Guard.

Salaried Military Employee Subclass: All current and former salaried employees of Amazon who were or are currently serving in the United States Armed Services or National Guard.

The members of each Subclass are also included in larger Class. The Class and Subclasses satisfy the Ninth Circuit's ascertainability requirement as they are: (a) clearly defined and not vague; and (b) defined by objective criteria.

3. There are Numerous Questions of Law and Fact Common to the Classes

FRCP 23(a)(2) requires that the case involve "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). However, "all questions of fact and law need not be common to satisfy the rule. The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class."

1 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).

2 Commonality is satisfied when the claims of the Class “depend upon a common contention
3 ... [that] must be of such a nature that it is capable of class-wide resolution – which means that
4 determination of its truth or falsity will resolve an issue that is central to the validity of each one
5 of the claims in one stroke.” *Wal-Mart*, 564 U.S. 338, 349-50 (2011). Although, for purposes of
6 Rule 23(a)(2), even a single common question will do. *Id.* “Whether a question will drive the
7 resolution of the litigation necessarily depends on the nature of the underlying legal claims that
8 the class members have raised.” *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014);
9 *Erica P. John Fund, Inc. v. Halliburton Co.*, 131 S.Ct. 2179, 2184 (2011). “In order for the
10 plaintiffs to carry their burden of proving that a common question predominates, they must show
11 that the common question relates to a central issue in the plaintiffs' claim.” *Olean Wholesale*
12 *Grocery Coop., Inc.*, 31 F.4th at 665 (citing *Wal-Mart*, 564 U.S. at 349-50).

13 The claims at issue here involve Amazon’s violations of Sections 4311, 4313 and 4316 of
14 USERRA through its common policies and practices relating to MLOA, UPT and OV. If these
15 policies and practice are found to be unlawful, the findings would affect all Class and respective
16 Subclass Members in the same way. “In determining whether the ‘common question’ prerequisite
17 is met, a district court is limited to resolving whether the evidence establishes that a common
18 question is capable of class-wide resolution, not whether the evidence in fact establishes that
19 plaintiffs would win at trial.” *Olean Wholesale Grocery Coop., Inc.*, 31 F.4th at 667. “While such
20 an analysis may ‘entail some overlap with the merits of the plaintiff's underlying claim,’ *Wal-Mart*,
21 564 U.S. at 351, the ‘[m]erits questions may be considered [only] to the extent [] that they are
22 relevant to determining whether the Rule 23 prerequisites for class certification are satisfied.’”
23 *Olean Wholesale Grocery Coop., Inc.*, 31 F.4th at 667 (quoting *Amgen Inc. v. Conn. Ret. Plans &*
24 *Tr. Funds*, 568 U.S. 455, 466 (2013)). “Rule 23 grants courts no license to engage in free-ranging
25 merits inquiries at the certification stage.” *Id.*

1 **4. Plaintiffs' Claims are Typical of the Claims of the Class and**
 2 **Respective Subclasses**

3 Federal Rule of Civil Procedure 23(a)(3) mandates that the claims of the representative
 4 parties are typical of the claims of the class. Fed. R. Civ. P. 23(a)(3). "Typicality refers to the
 5 nature of the claim or defense of the class representative, and not to the specific facts from which
 6 it arose or the relief sought." *Hanon*, 976 F.2d at 508. "[T]he typicality requirement is permissive
 7 and requires only that the representative's claims are reasonably co-extensive with those of absent
 8 class members; they need not be substantially identical." *Rodriguez v. Hayes*, 591 F.3d 1105, 1124
 9 (9th Cir. 2010); *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014).

10 In the Ninth Circuit, "representative claims are 'typical' if they are reasonably coextensive
 11 with those of absent class members; they need not be substantially identical. Some degree of
 12 individuality is to be expected in all cases, but that specificity does not necessarily defeat
 13 typicality." *Hanlon*, 150 F.3d at 1020; *Staton*, 327 F.3d at 957. Typicality is satisfied so long as
 14 the named plaintiffs' claims stem from the same event, practice, or course of conduct that forms
 15 the base of the class claims and [is] based upon the same legal remedial theory. *See, Jordan v.*
 16 *County of Los Angeles*, 669 F.2d 1311, 1321 (9th Cir. 1982), *vacated on other grounds*, 459 U.S.
 17 810 (1982).

18 Courts in the Ninth Circuit "do not insist that the named plaintiffs' injuries be identical
 19 with those of the other class members, only that the unnamed class members have injuries similar
 20 to those of the named plaintiffs and that the injuries result from the same, injurious course of
 21 conduct." *Armstrong v. Davis*, 275 F.3d 849, 869 (9th Cir. 2001); *Hanon*, 976 F.2d at 508 ("The
 22 test of typicality is whether other members have the same or similar injury, whether the action is
 23 based on conduct which is not unique to the named plaintiffs, and whether other class members
 24 have been injured by the same course of conduct."); *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 661-
 25 62 (E.D. Cal. 2008); *Kincaid v. City of Fresno*, 244 F.R.D. 597, 603 (E.D. Cal. 2007) (typicality
 26 satisfied where plaintiffs "challenge a uniform policy" toward the Class).

27 Mahone's claims are typical of every member of the Hourly Military Employee Subclass,

1 because she was an hourly employee and was subjected to the same MLOA, UPT and OV policies
 2 and practices as ever other member of the Subclass. Lawler Decl., Ex 11, Dwyer Decl., 26:23-
 3 33:20; Ex. 9, Hughes Depo., p. 73:10-14. Toles's claims are typical of every member of the
 4 Salaried Military Employee Subclass, because he was a salaried employee and was subjected to
 5 the same MLOA and OV policies and practices as ever other member of the Subclass. Amazon
 6 would have this Court limit Tole's typicality to other employees in the Pathways program, by the
 7 reality is that out of more than 900 Pathways participants only 5 or 6 of those persons have ever
 8 taken MLOA since 2021. Lawler Dec., Ex. 11, Dwyer Depo., p. 14:21-25, p. 17:1-20. Tole was
 9 subjected to the same MLOA policies and practices as every other Salaried Military Employee.

10 **5. Plaintiff will Fairly and Adequately Protect the Interests of the** 11 **Classes**

12 The requirement of adequacy contained in FRCP 23(a)(4) ensures that "the representative
 13 parties will fairly and adequately protect the interests of the class." The adequacy requirement
 14 involves the satisfaction of two factors: "(1) do the named plaintiffs and their counsel have any
 15 conflicts of interest with other class members and (2) will the named plaintiffs and their counsel
 16 prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020. Both elements
 17 of Rule 23(a)(4) are satisfied here. Regarding the first element, it is well settled that "only a conflict
 18 that goes to the very subject matter of the litigation will defeat the party's claim of representative
 19 status." *O'Connor v. Boeing North American, Inc.*, 184 F.R.D. 311, 335 (C.D. Cal. 1998). There
 20 is no evidence that Plaintiff has any interest which is antagonistic to the interests of the Class. The
 21 interests of Plaintiff and the Classes are fully aligned in determining whether Amazon's MLOA,
 22 UPT and OV policies and practices violate USERRA. There is no potential for conflict, as
 23 Plaintiffs will only succeed if the Classes also succeed. Plaintiffs are well-informed about the
 24 litigation, have and will continue to act in the best interests of the Classes, and will participate in
 25 the litigation as needed. Tole Decl., ¶¶2-5, 13-14; Mahone Decl., ¶¶2-5. *See, In re Live Concert*
 26 *Antitrust Litigation*, 247 F.R.D. 98, 120 (C.D. Cal. 2007) (finding Rule 23(a)(4)'s adequacy
 27 requirement satisfied where plaintiff possesses a "rudimentary understanding" of the action and a

1 “willingness to assist” counsel in the prosecution of the litigation).

2 In addition, Plaintiff has retained counsel with significant experience in prosecuting
3 consumer class actions, including USERRA claims. GJS Decl., ¶¶10-16, Lawler Decl., ¶¶2-4.

4 **B. The Classes Satisfy Rule 23(B)(3)**

5 If the Rule 23(a) prerequisites are satisfied, a court next considers whether the proposed
6 class can be maintained under at least one (1) of the subparts of Rule 23(b). *See, e.g., Valentino*,
7 97 F.3d at 1234. Here, Plaintiff seeks certification under Rule 23(b)(3) which has two
8 requirements: (1) that “questions of law or fact common to class members predominate over any
9 questions affecting only individual members,” and (2) “that a class action is superior to other
10 available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

11 **1. Common Issues Predominate Over Questions Affecting Individual**
12 **Class Members**

13 “The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently
14 cohesive to warrant adjudication by representation.” *Amchem Prods., Inc. v. Windsor*, 521 U.S.
15 591, 623 (1997). Under FRCP 23(b)(3), the “focus is on the relationship between the common and
16 individual issues.” *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d 953, 957 (9th
17 Cir. 2009) (internal quotation omitted). “[T]he common questions must be a significant aspect of
18 the case that can be resolved for all members of the class in a single adjudication.” *Berger v. Home*
19 *Depot USA, Inc.*, 741 F.3d 1061, 1068 (9th Cir. 2014) (internal quotation, brackets and alteration
20 omitted).

21 “When one or more of the central issues in the action are common to the class and can be
22 said to predominate, the action may be considered proper under Rule 23(b)(3) even though other
23 important matters will have to be tried separately, such as damages or some affirmative defenses
24 peculiar to some individual class members.” *Olean Wholesale Grocery Coop., Inc.*, 31 F.4th at
25 667 (quoting *Tyson Foods*, 577 U.S. at 453). “That the defendant might attempt to pick off the
26 occasional class member here or there through individualized rebuttal does not cause individual
27 questions to predominate.” *Id.*

Plaintiffs seeking class certification do “not need to present a fully formed damages model ‘when discovery was not yet complete and pertinent records may have been still within Defendant’s control.’” *Owino v. Corecivic, Inc.*, 60 F.4th 437, 447 (9th Cir. 2022) (citation omitted). “Rather, ‘plaintiffs must show that ‘damages are capable of measurement on a classwide basis,’ in the sense that the whole class suffered damages traceable to the same injurious course of conduct underlying the plaintiffs’ legal theory.” *Id.* “In other words, ‘plaintiffs must be able to show that their damages stemmed from the defendant’s actions that created the legal liability.’” *Id.* (quoting *Vaquero v. Ashley Furniture Indus., Inc.*, 824 F.3d 1150, 1154 (9th Cir. 2016)).

a. Common Issues Predominate as to Amazon’s Policies and Practices Affecting its Military Employees

This case is distinguishable from the employment practices at issue in *Wal-Mart*, in that pay and promotion decisions at Wal-Mart “were generally committed to local managers’ broad discretion, which is exercised ‘in a largely subjective manner.’” *Wal-Mart*, 564 U.S. at 343. “As for salaried employees [at Wal-Mart], such as store managers and their deputies, higher corporate authorities have discretion to set their pay within preestablished ranges.” *Id.* “Promotions work in a similar fashion.” *Id.* “Wal-Mart permits store managers to apply their own subjective criteria when selecting candidates as ‘support managers,’ which is the first step on the path to management.” *Id.*

In this case, pay and promotion decisions at Amazon are based upon Company-wide policies and practices tied to OV ratings of the Employees. OV (i.e., performance code/rating/ranking LE, HV1, HV2, HV3, TT, etc.) assigned to an Amazon employee is a factor utilized by Amazon in determining employee compensation. Stonebarger Decl., Ex. 5, [RFA 34], 5:19-6:9.

Like a in Title VII case, a protective statute may “be violated in many ways - by intentional discrimination, or by hiring and promotion criteria that result in disparate impact, and by the use of these practices on the part of many different superiors in a single company.” *Wal-Mart*, 564 U.S. at 350. “Significant proof that an employer operated under a general policy of discrimination

conceivably could justify a class of both applicants and employees if the discrimination manifested itself in hiring and promotion practices in the same general fashion, such as through entirely subjective decisionmaking processes.” *Id.* at 353. The Supreme Court in *Wal-Mart* “recognized that, ‘in appropriate cases,’ giving discretion to lower-level supervisors can be the basis of Title VII liability under a disparate-impact theory- since ‘an employer’s undisciplined system of subjective decisionmaking [can have] precisely the same effects as a system pervaded by impermissible intentional discrimination.’” *Wal-Mart*, 564 U.S. at 355. Amazon’s OV ranking system pervaded the rights of Amazon’s Military Employees by affecting their pay and promotion opportunities through artificially low OV ratings directly relating to their absence due to military service obligations.

b. Individual Damages Calculations Do Not Defeat Predominance

At class certification, Plaintiff must “establish[] that damages are capable of measurement on a classwide basis.” *Comcast Corp. v. Behrend*, 133 S. Ct. 1426, 1433 (2013). Plaintiffs’ method for calculating damages on a classwide basis must be consistent with their theory of liability by “measur[ing] only those damages attributable to that theory.” *Id.*; *see also, id.* at 435 (“The first step in a damages study is the translation of the legal theory of the harmful event into an analysis of the economic impact of that event.”). Nevertheless, “[c]alculations need not be exact.” *Id.* However, in the Ninth Circuit, the fact that individualized damage calculations may be necessary cannot, alone, defeat class certification. *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 513 (9th Cir. 2013).

To prevent the Company from profiting from its unlawful and discriminatory conduct, USERRA entitles Plaintiff and the Classes to compensation for lost benefits, liquidated damages, and injunctive relief because of the employer’s failure to comply with USERRA. *See*, 38 U.S.C. §4323(d). Here the damage calculations for the Military Employees suffering Amazon’s unlawful policies and practices affecting their job level and/or OV ratings can be calculated utilizing Amazon’s internal methodology/formula calculations for determining compensation based on those respective job levels and/or OV ratings. Proper back pay can easily be calculated for Military

1 Employees who were terminated as a result of Amazon's unlawful policies and practices. Damages
 2 can be calculated on a class-wide basis, based on the periods of military leave taken by Class
 3 Members as identified from the records retained by the Company. Stonebarger Decl., Ex. 1 and
 4 ¶¶2-4. And whether Amazon's policies and practices were willful violations of USERRA would
 5 result in the same formula for liquidated damages. *See*, 38 U.S.C. §4323(d).

6 **2. A Class Action is the Superior Method of Adjudication**

7 Class actions have been found superior where individual claims are relatively small, there
 8 is a large volume of individual claims, individuals lack a compelling interest in controlling their
 9 own litigation, and there would be a great strain on judicial resources if individual claims were
 10 filed. *See, Lerwill v. Inflight Motion Pictures Inc.*, 582 F.2d 507, 512-13 (9th Cir. 1978).

11 Rule 23(b)(3) enumerates the following factors for the court to consider in its superiority
 12 analysis: (A) the interest of members of the class in individually controlling the prosecution ... of
 13 separate actions; (B) the extent and nature of any litigation concerning the controversy already
 14 commenced by ... members of the class; (C) the desirability ... of concentrating the litigation of the
 15 claims in the particular forum; and (D) the difficulties likely to be encountered in the management
 16 of a class action. Fed. R. Civ. P. 23(b)(3).

17 In the Ninth Circuit, the ultimate test for superiority of the class action mechanism merely
 18 requires "determination of whether the objectives of the particular class action procedure will be
 19 achieved in the particular case," which "necessarily involves a comparative evaluation of
 20 alternative mechanisms of dispute resolution." *Hanlon*, 150 F.3d at 1023 (*citing* 7A Wright &
 21 Miller, *Federal Practice and Procedure*, § 1779 (2d ed. 1986); *see also, Lymburner*, 263 F.R.D.
 22 at 543; *Greenwood*, 2010 U.S. Dist. LEXIS 3839.

23 **a. Class Members Have No Interest in Pursuing 24 Individual Actions and No Other Actions are Pending**

25 The first factor to be considered is the interest of each class member in "individually
 26 controlling the prosecution or defense of separate actions." Fed. R. Civ. P. 23(b)(3)(A). Here, as
 27 in *Hanlon*, the alternative mechanism would be individual claims for relatively small amounts in
 relation to the burdens of litigation. This would not only burden the court system that would be

1 deciding the same legal issues in a number of small cases but would also not make economic sense
 2 for litigants or lawyers. It is clear that if individual cases were brought regarding the claims alleged
 3 in this action “litigation costs would dwarf potential recovery.” *Hanlon*, 150 F.3d at 1023; *see also*,
 4 *Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001).

5 The second factor to be considered, “the extent and nature of any litigation concerning the
 6 controversy already commenced,” Fed. R. Civ. P. 23(b)(3)(B), by members of the Class, also
 7 supports proceeding with certification in this action. As of the date of this filing, Plaintiff’s counsel
 8 is not aware of any similar actions pending on the claims alleged in this action. *See*, Stonebarger
 9 Decl. at ¶17. Thus, the second element is satisfied.

10 **b. This Court is the Appropriate Forum for this Litigation and**
There Are No Manageability Issues

11 The Western District of Washington is the appropriate forum for this litigation. The
 12 Company’s principal place of business is within this forum, and USERRA provides for any actions
 13 against private employers to enforce its protections be filed in Federal Court. 38 U.S.C.
 14 §4323(c)(2).

15 The above factors all indicate that class adjudication would be superior in this case. Absent
 16 class adjudication, judicial resources would be strained by scores of individual claims all
 17 addressing the identical issues. Additionally, given the risks and costs of litigation, it is unlikely
 18 that the potential class members would be willing to litigate on their own. Finally, there is no
 19 indication that individuals have a compelling interest in controlling their own litigation. Plaintiff’s
 20 counsel is unaware of any individual litigation brought by any Class member seeking damages
 21 relating to the claims in this action. *See*, Stonebarger Decl. at ¶17. Thus, a class action is the only
 22 realistic chance for members of the Class to have their claims efficiently addressed.

23 **V. CONCLUSION**

24 For the foregoing reasons, Plaintiffs respectfully requests that the Court: (a) grant
 25 Plaintiffs’ Motion for Class Certification; (b) certify the nationwide Class and Subclasses as
 26 defined herein; (c) appoint Stonebarger Law, APC and Pilot Law, P.C. as Class Counsel; and (d)
 27 grant such other and further relief as the Court deems proper.

DATED October 13, 2023

s/ Gene J. Stonebarger

Gene J. Stonebarger (*admitted hac vice*)

STONEBARGER LAW, APC

101 Parkshore Dr., Suite 100

Folsom, CA 95630

Tel: 916-235-7140

Email: gstonebarger@stonebargerlaw.com

WSBA 35815

Daniel Kalish, Esq.

HKM Employment Attorneys LLP

600 Stewart Street, Suite 901

Seattle, WA 98101

Telephone: 206-838-2504

Email: dkalish@hkm.com

Brian J. Lawler (*admitted pro hac vice*)

PILOT LAW, P.C.

4632 Mt. Gaywas Dr.

San Diego, CA 92117

Tel: 619-255-2398

Email: blawler@pilotlawcorp.com

Kevin L. Wilson (*admitted pro hac vice*)

KEVIN WILSON LAW PLLC

3110 Horton Avenue

Louisville, KY 40220

Telephone: 502-276-5050

Email: kevin@kwilsonlaw.com

Counsel for Plaintiffs

and the Proposed Putative Classes

CERTIFICATE OF SERVICE

I certify that on October 13, 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notification of the filing to all registered users of the CM/ECF system.

Dated: October 13, 2023

s/ Gene J. Stonebarger

Gene J. Stonebarger